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## II. FACTS RELEVANT TO MOTION

Plaintiff has filed an amended civil right complaint naming King County and Designated Mental Health Providers Gail Bonicalzi and Melinda Hasegawa. (Dkt. 38) Plaintiff alleges that King County Defendants violated his rights under the Fourth, Fifth and Eighth Amendments by having him civilly committed at Harborview Medical Center for 72 hours. (Dkt. 38). On July 6 and 10, 2017, Plaintiff filed three pending motions.

## III. ARGUMENT

### A. General Response to Plaintiff's Motions and Intent to Join in the City of Seattle Defendant's Responses

King County Defendants join in the City of Seattle Defendants' response to Plaintiff's Motion for an Extension of Deadlines (Dkt. 54), City of Seattle Defendants' response to Plaintiff's Motion Regarding Un-redacted Filings (Dkt. 55), and City of Seattle Defendants' response to Motion Regarding Motive and Retaliation (Dkt. 65) rather than providing additional argument here. King County Defendants also join in the City of Seattle Defendants response to Dkts. 52, 61, 62, 63, 69, and 70.

With regard to Plaintiff's Motion Regarding "Under color of law" Definition (Dkt. 70), King County Defendants further ask this court to deny such motion as no defendant contested the proper legal definition of such term in answer to Plaintiff's suit and have merely indicated that no defendant is required to admit or deny a conclusion of law (Dkts. 60, 64).

### B. Motion Regarding Constitutionality of RCW 71.05

Plaintiff's "Motion Pursuant to Rule 5.1 (FRCP) Constitutional Challenge to a Statute" (Dkt. 63) attempts to question the constitutionality of RCW 71.05. King County Defendants request that this Court deny Plaintiff's attempt to request this Court consider the constitutionality of this statute as it is not raised in his complaint as required nor has he served the proper parties. Fed. R. Civ. P. 8(a); RCW 7.24.110. Further, Plaintiff has not adequately pled a constitutional challenge to

1 the statute sufficient for defendants to respond to such challenge. Because Plaintiff has not met his  
2 pleading or service burden, his motion must be denied.

### 3 C. Motion for Injunctive Relief

4 This Court should deny plaintiff's motion for injunctive relief because Plaintiff has not  
5 explained what he wants defendants to be enjoined from doing and has not demonstrated that he is  
6 legally entitled to a preliminary injunction. With regard to the first issue, Plaintiff makes a whole  
7 host of allegations against specific police officer defendants and then asks for a Temporary  
8 Restraining Order against all defendants (including both municipalities and Designated Mental  
9 Health Providers Bonicalzi and Hasegawa, (DMHPs)). Nowhere in his motion does Plaintiff explain  
10 the rationale for a TRO against either municipality or the DMHPs or what any defendant would be  
restrained from doing.

11 Further, in order to obtain an injunction, the Plaintiff must establish 1) likelihood of success  
12 on the merits; 2) that he is likely to suffer irreparable harm in absence of preliminary relief; 3) that  
13 balance of hardships tip in his favor; and 4) that public interest favors injunction. *Seattle Mideast*  
14 *Awareness Campaign v. King County*, 771 F. Supp. 2d 1266, 1271 (2011)(citing *Winter v. Natural*  
15 *Resources Defense Council, Inc.*, 555 U.S. 7, 129 S.Ct. 365 at 374, 172 L.Ed.2d 249 (2008); *Alliance*  
16 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1137-38 (9th Cir. 2011)). In this case, the Court need  
17 not proceed past the first factor, because plaintiff cannot establish his likelihood of success on the  
18 merits with regard to King County Defendants. His complaint names King County but fails to  
19 identify any custom or practice that allegedly violates his rights (as required by *Monell*<sup>1</sup>) and names  
two DMHPs for essentially doing their jobs to comport with the requirements of RCW 71.05.153.

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20 <sup>1</sup> To state a constitutional claim against a municipality, a plaintiff must: 1) identify the specific  
21 "policy" or "custom;" 2) fairly attribute the policy or up to *Monell* analysis. *Monell v. New York City*  
22 *Dept. of Social Services*, 436 U.S. 658, 691, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). To state a  
23 constitutional claim against a municipality, a plaintiff must: 1) identify the specific "policy" or  
"custom;" 2) fairly attribute the policy or custom and fault for its creation to the municipality; and 3)  
establish the necessary "affirmative link" between the identified policy or custom and the specific  
constitutional violation. *City of Canton v. Harris*, 489 U.S. at 378, 389, 109 S.Ct. 1197, 103 L.Ed.2d  
412 (1989). Further, plaintiff must demonstrate that King County was the "moving force" behind the

1           Second, Plaintiff is not likely to prevail on the merits because DMHPs should be entitled to  
 2 absolute immunity for their quasi-judicial role in detaining individuals under the statute. *See*  
 3 *Mishler v. Clift*, 191 F.3d 998, 1009 (9th Cir.1999) (Absolute immunity appropriate where  
 4 medical board officials undertook both quasi-judicial and quasi-prosecutorial functions). At a  
 5 minimum, all defendants in this matter are entitled to qualified immunity under RCW 71.05.120.  
 6 This immunity extends to any “peace officer responsible for detaining a person pursuant to this  
 7 chapter,” as well as to any “county designated mental health professional, [or] the state, a unit of  
 8 local government, or an evaluation and treatment facility.” RCW 71.05.120(1). Additionally,  
 9 because the constitutionality of RCW 71.05.153 is not an open question defendants cannot be  
 10 interpreted to have violated any “clearly established right.” *In re Det. of June Johnson*, 179 Wn.  
 App. 579, 591, 322 P.3d 22 (2014) (holding that RCW 71.05.153 satisfies due process).

11           Next, plaintiff has failed to demonstrate that he would suffer irreparable harm in the absence  
 12 of preliminary relief. He has made no allegations that he would suffer irreparable harm by King  
 13 County Defendants in his motion yet he requests an injunction for a period of five years. Further,  
 14 any alleged harm he claims in his motion is belied by the recent guilty finding in King County  
 Superior Court that Plaintiff assaulted two police officers. *Declaration of Kanner, Ex. A.*

15           Finally, it is firmly established that a preliminary injunction is an extraordinary remedy never  
 16 awarded as a right. *Winter* at 376 (citing *Munaf v. Geren*, 533 U.S. 674, 689-690, 128 S.Ct. 2207,  
 17 2218-2219 (2008)). In exercising their discretion, “courts of equity should pay particular regard for  
 18 the public consequences in employing the extraordinary remedy of injunction.” *Id.*, (citing *Romero-*  
 19 *Barcelo*, 456 U.S. 305, 312, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982)). Assuming Plaintiff’s request is  
 20 that all King County and City of Seattle personnel have no contact with him for a period of five

21 injury alleged. *Bryan County Commissioners v. Brown*, 520 U.S. 397, 403-04 (1997). Plaintiff’s  
 22 claims fail because he cannot identify a custom, policy, or practice fairly attributable to King County  
 23 that causes a violation of his constitutional rights. Nor can he show that King County is the “moving  
 force” behind the injuries he alleges. King County did not enact RCW 71.05.153, the Washington  
 State legislature did. Rather, King County is merely complying with the state statute requiring it.

1 years, granting such request would mean that he would be free to commit any crime within the City  
 2 of Seattle and much of King County without consequence or that there would be no power to civilly  
 3 commit him under RCW 71.05.153 even if he met the criteria under the statute because neither law  
 4 enforcement nor the DMHPs would be able to act. As is obvious, to grant Plaintiff's motion for  
 5 injunction relief would undermine the purpose of the statute at issue in this case whose express  
 6 purpose is that of public safety. RCW 71.05.010(a). Plaintiff has not demonstrated that public  
 7 interest favors injunctive relief in this matter.

#### 8 IV. CONCLUSION

9 For the foregoing reasons, King County defendants request that Plaintiff's motions be  
 10 denied.

11 DATED this 28<sup>th</sup> day of July, 2017.

12 DANIEL T. SATTERBERG  
 13 King County Prosecuting Attorney

14 By: /s/ Samantha D. Kanner  
 15 SAMANTHA D. KANNER, WSBA #36943  
 16 Senior Deputy Prosecuting Attorney  
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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on July 28, 2017, I electronically filed the foregoing document(s) along with the Declaration of Samantha Kanner and Exhibit A, and Proposed Order Denying Plaintiff's Motions with the Clerk of the Court using the CM/ECF E-Filing System, thus electronically serving counsel for City of Seattle Defendants and caused a copy of the same documents to be served on the following party via Regular USPS Mail:

**Kyle Lydell Canty  
BA #216035994  
King County Jail  
500 5<sup>th</sup> Ave  
Seattle, WA 98104**

I certify under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 28<sup>th</sup> day of July, 2017.

/s/Lindsey Macalalad  
LINDSEY MACALALAD  
Legal Secretary